



# METHFESSEL & WERBEL

A Professional Corporation

JOEL N. WERBEL>  
JOHN METHFESSEL, JR.>  
FREDRIC PAUL GALLIN\*+^  
WILLIAM S. BLOOM\*>  
ERIC L. HARRISON\*+  
MATTHEW A. WERBEL>  
LORI BROWN STERNBACK\*+  
I. BLAKELEY JOHNSTONE, III\*+  
GINA M. STANZIALE>  
PAUL J. ENDLER JR.>  
JAMES P. CULLEN, JR.=^  
THOMAS O. MULVIHILL>  
JAMES FOXEN^  
SARAH K. DELAHANT+

Of Counsel  
STEPHEN R. KATZMAN#  
ED THORNTON>  
MICHAEL TRIFIOLIS

Retired  
JOHN METHFESSEL, SR.>  
(1935-2017)  
DON CROWLEY\*+  
(1942-2024)  
MARC DEMBLING\*+  
(1944-2022)

Counsel  
ADAM M. CARMAN+^  
SHAJI M. EAPEN+  
ANGELA M. GURRERA>  
GERALD KAPLAN>  
JARED P. KINGSLEY\*+  
JOHN R. KNODEL\*+  
LESLIE A. KOCH=^  
CHARLES T. MCCOOK, JR.\*>  
CHRISTINA MICHELSON+  
RICHARD A. NELKE-  
STEVEN K. PARNES+  
RAINA M. PITTS^  
AMANDA J. SAWYER^  
JARED S. SCHURE>  
STEVEN A. UNTERBURGER+

Associates  
JILLIAN T. CLARK>  
EDWARD D. DEMBLING>  
MICHAEL R. EATROFF>  
FRANK J. KEENAN+^  
SCOTT KETTERER>

Associates, Cont'd  
ALLISON M. KOENKE>  
ASHLEY E. MALANDRE^  
ANTHONY J. MANCUSO>  
CHRISTEN E. MCCULLOUGH^  
KAJAL J. PATEL+  
ADAM M. SCHWARTZ+  
SARAH E. SHEPP+  
ALYCIA M. SWIFT+

\* Certified by the Supreme Court of  
New Jersey as a Civil Trial Attorney  
+Member of NY & NJ Bar  
^Member of PA & NJ Bar  
^Member of NY Bar only  
>Member of NJ Bar only  
#Member of NJ & LA. Bar  
<Member of NJ & DC Bar  
≤Member of NJ, NY & CA Bar  
≥Member of NJ, PA & DC Bar  
~Member of NY, NJ & DC Bar  
=Member of NY, NJ & MA Bar

Please reply to New Jersey

May 23, 2024

## VIA ECOURTS FILING

The Honorable Edward S. Kiel, U.S.D.J.  
United States District Court  
Mitchell H. Cohen Building & U.S. Courthouse  
4<sup>th</sup> and Cooper Streets  
Camden, NJ 08101

RE: **FREDERICK K. SHORT JR. AND TAMATHA COSTELLO VS. NEW JERSEY DEPARTMENT OF EDUCATION, ET AL.**

Our File No. : 94305 ELH  
Docket No. : 1:23-CV-21105-ESK-EAP

Dear Judge Kiel:

This office represents the Cranford Board of Education and Cranford High School (hereinafter "Cranford"). In response to Your Honor's text order of May 15, 2024 the Court's Rules and Preferences, we hereby request permission to file a dispositive Motion to Dismiss the Complaint on the pleadings pursuant to Rule 12(C).

Our argument, previously asserted in our terminated Rule 12(B)(6) motion, is as follows:

Plaintiff's Amended Complaint must be dismissed for failure to state a claim and for lack standing (Rules 12(b)(6) and (b)(1). Furthermore, the Amended Complaint should be dismissed based on lack of Article III standing and failure to state a claim under the 14<sup>th</sup> Amendment.

Plaintiff Short's children attend school in the Cherry Hill Township Public School District and Plaintiff Costello's attend Cranford Public Schools. With respect to Plaintiff Costello's child, the Amended Complaint alleges "the school principal through the guidance counselor at Cranford Public, had confidential 2025 Lincoln Highway • Suite 200 • P.O. Box 3012 • Edison, NJ 08818 • (732) 248-4200 • FAX (732) 248-2355 112 West 34<sup>th</sup> Street • 17<sup>th</sup> Floor • New York, NY 10120 • (212) 947-1999 • FAX (212) 947-3332 One Liberty Place • 1650 Market St., 36<sup>th</sup> Floor • Philadelphia, PA 19103 • (215) 665-5622 • FAX (215) 665-5623 101 Federal Street • Suite 1900 • Boston, MA 02110 • (617) 204-5630 • FAX (617) 977-9398

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conversations with Plaintiff Costello's child about her/his gender identity." Further, the Amended Complaint alleges "the school assisted with the child's delusional, self-diagnosis (at age 12) of being born in the wrong body, essentially alluding to the fact that she/he was not good enough as God intended, affirmed the child's new identity and the praised the child for being brave and courageous." According to Plaintiff Costello, the school affirmed the child's change in gender identity without knowledge or consent of Plaintiff Costello. According to Plaintiff Costello, this affected the child's mental health. Therefore, Plaintiff Costello removed her child from Cranford Public Schools after 7th grade, and the child has attended another school for grades 8-10.

Pursuant to Rule 12(b)(6) and 12(b)(1), the Court should dismiss the Amended Complaint for failure to state a claim against the Cranford Board of Education and Cranford High School. First, Count II, which alleges violation of the New Jersey Administrative Procedures Act, does not apply to the Cranford Defendants. Next, Plaintiff Costello's child was removed from Cranford Public Schools, and therefore has no standing to seek prospective relief. Substantively, the Amended fails to state a claim under the 14th Amendment, as the New Jersey Department of Education's Guidance document does not violate Plaintiffs' fundamental rights; nor does the U.S. Constitution mandate that a school communicate to a parent when his or her child declares a new gender identity.

We appreciate the Court's consideration of this request.

Respectfully submitted,

**METHFESSEL & WERBEL, ESQS.**



Eric L. Harrison  
harrison@methwerb.com  
Ext. 138

ELH:as/tm

Methfessel & Werbel, Esqs.

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cc: VIA EMAIL: [tstavolajr@stavolalaw.com](mailto:tstavolajr@stavolalaw.com)

Thomas Stavola Jr., Esq.

Law Office of Thomas Stavola, Jr. LLC

209 County Road 537

Colts Neck, NJ 07722

VIA EMAIL: [jshanaberger@hillwallack.com](mailto:jshanaberger@hillwallack.com)

Jeffrey Shanaberger Esq.

21 Roszel Road P.O. Box 5226

Princeton, NJ 08543-5226

Cherry Hill Board of Education

VIA EMAIL: [matthew.lynch@dol.lps.state.nj.us](mailto:matthew.lynch@dol.lps.state.nj.us)

Matthew Jon Lynch, Assistant Chief, Deputy Attorney General

State of New Jersey

Office of the Attorney General

25 Market Street

Trenton, NJ 08611

New Jersey Department of Education and Acting Commissioner Angelica Allen-McMillan